

**IN THE SUPREME COURT OF MISSOURI**

**MATTHEW LEVINSON,**

Appellant, Appeal No. SC 84703

vs.

**THE STATE OF MISSOURI, et  
al.,**

Respondents

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.Appeal from the Circuit Court in and for the City of St. Louis, Missouri  
22<sup>nd</sup> Judicial Circuit  
Honorable Thomas C. Grady, Judge, Division No. 3

Brief for Appellant Matthew Levinson

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<p>Bush v. Gore now mandates more, 531 U.S. at 109: Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. <i>When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.</i></p>	
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## Table Of Statutes And Cases

### Statutes

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### Other Authorities

**Error! No table of authorities entries found.**

### **Grounds On Which Jurisdiction Is Invoked**

The jurisdiction of this Court is invoked pursuant to the Missouri Constitution Art. V, § 3 RSMO § 311.060.2(2) RSMO § 311.060.2(2) which prohibits an employee convicted of a felony unrelated to the manufacture or sale of intoxicating liquor from directly participating as an employee in retail sales of intoxicating liquor.

Appellant submits that insofar as prohibits an employee convicted of a felony unrelated to the manufacture or sale of intoxicating liquor from directly participating as an employee in retail sales of intoxicating liquor that such Section works:

1. Both a violation of the Right to Work and the Equal Rights clauses of the Bill of Rights, ***Bush*** Bush v. Gore, 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000) and ***Akin v. Missouri Gaming Commission***, 956 S.W.2d 261 (Mo. banc 1997) *Akin v. Missouri Gaming Commission*, 956 S.W.2d 261 (Mo. banc 1997) (opponents of river boat casino gambling have standing to challenge operation of gambling facilities in artificial spaces filled with water from the Missouri River, not contiguous to the river, even though they would never sustain injury in fact because they would never gamble in such facilities) or ***Mager v. City of St. Louis***, 699 S.W.2d 68 (Mo. Ct. App. 1985) (“Although Mager is not a licensee under the ordinance, he is a person whose rights are affected by its enforcement.”)

Given that the case presents only questions of law, review is ***de novo***.

Each year, approximately 600,000 inmates are released from jails and prisons in

the United States, perhaps as many as 15,000 persons in the state of Missouri alone.

Missouri had 28,757 prisoners incarcerated on December 31, 2001. *Prisoners in 2001*.

Heinrich (for the Great Cities Institute, University of Illinois at Chicago) *Reducing*

*Recidivism Through Work: Barriers and Opportunities for Employment of Ex-*

*Offenders* (passim) (September 2000) Heinrich (for the Great Cities Institute, University

of Illinois at Chicago) *Reducing Recidivism Through Work: Barriers and Opportunities*

*for Employment of Ex- Offenders* (passim) (September 2000) (collecting research).<sup>2</sup>

The national recidivism rate is estimated to be as high as 60 percent.

Recidivism studies continue to show that offenders are most likely to commit additional crimes within the first year after their release, which makes employment assistance shortly after, or even prior to, the offenders' release particularly important. *Id.*

This case deals with a single barrier to employment of felons. RSMO § 311.060.2(2) prohibits businesses that hold licenses for the sale of alcoholic beverages from employing felons "to directly participate in retail sales of intoxicating liquor." The sub-section reads:

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<sup>1</sup> <http://www.ojp.usdoj.gov/bjs/pub/pdf/p01.pdf>

<sup>2</sup> [http://www.uic.edu/cuppa/gci/publications/workforce\\_development\\_partnership.htm](http://www.uic.edu/cuppa/gci/publications/workforce_development_partnership.htm)  
(Select "By Year" then select "2000").

(2) No license issued under this chapter or chapter 312, RSMo, shall be denied, suspended, revoked or otherwise affected based solely on the fact that an employee of the licensee has been convicted of a felony unrelated to the manufacture or sale of intoxicating liquor so long as any such employee does not directly participate in retail sales of intoxicating liquor. Each employer shall report the identity of any employee convicted of a felony to the division of liquor control. The division of liquor control shall promulgate rules to enforce the provisions of this subdivision.

A regulation of the Supervisor of Liquor Control also imposes such a prohibition, as follows (RSMO § 561.016 RSMO § 561.016 provides:

**Basis of disqualification or disability.**

561.016. 1. No person shall suffer any legal disqualification or disability because of a finding of guilt or conviction of a crime or the sentence on his conviction, unless the disqualification or disability involves the deprivation of a right or privilege which is

- (1) Necessarily incident to execution of the sentence of the court; or
- (2) Provided by the constitution or the code; or
- (3) Provided by a statute other than the code, when the conviction is of a crime defined by such statute; or
- (4) Provided by the judgment, order or regulation of a court, agency or

official exercising a jurisdiction conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is reasonably related to the competency of the individual to exercise the right or privilege of which he is deprived.

2. Proof of a conviction as relevant evidence upon the trial or determination of any issue, or for the purpose of impeaching the convicted person as a witness, is not a disqualification or disability within the meaning of this chapter.

The purpose of Section 561.016 was to implicitly repeal statutes like Section 311.060 so as to rationalize the collateral consequences of a criminal conviction. The Comment to the 1973 Proposed Code, published in Vernon's Annotated Missouri Statutes, LF at 032-33, stated the intent and purpose of 561.016, as follows:

#### **Comment to 1973 Proposed Code**

Based on Model Penal Code § 306.1 and Proposed New Jersey Penal Code § 2C:51-1 (1971), this general section is the foundation of the recommended proposal to rationalize the collateral consequences of a criminal conviction. As indicated by the proliferation of statutory provisions now on the books there is a need for general provisions on the matter of disqualification or disability following conviction.

No person shall suffer any legal disqualification or disability



because of a finding of guilty or a criminal conviction unless he falls within one or more of the four subsections, 1(1) to(4). Subsection 1(1) preserves disabilities necessarily incident to execution of the sentence. A person who is in prison would not be permitted to engage in acts inconsistent with incarceration; *e. g.*, he obviously could not continue any outside employment. Chapter 460 RSMo on estates of convicts would continue to apply and require appointment of a trustee in most situations in which a convict is sued or wishes to sue while in prison. See §460.100 RSMo. If the convict is a litigant, he would still have to obtain a writ of habeas corpus in order to leave prison to testify.

Subsection 1(2) recognizes that either the Constitution or the Code may require a specific legal disability. *E. g.*, Mo. Const. art. VIII § 2 provides that “No . . . person while confined in any public prison shall be entitled to vote.

Subsection 1(3) permits retention of any provisions outside of the Code, wherever they might be, which make

disqualification or disability a penalty for an offense defined by such statute. There should be very few of these statutes containing special penalties if the Code is enacted and the present disqualification and disability statutes are repealed and replaced by the Code provisions.

Subsection 1(4) allows a deprivation when it is provided in a judgment, order or regulation of a court, agency or official exercising jurisdiction conferred by law, whenever the commission of the crime of the conviction or the sentence “is reasonably related” to the competency of the offender to exercise the right or privilege of which he is deprived. This is the most important provision in this section. *The present law sometimes contains blanket restrictions against employment in certain regulated areas of persons convicted of crimes. Sometimes conviction is relevant to the public safety interests underlying the regulation, but often it is not. By eliminating irrational barriers to employment, we assist offenders in reintegrating themselves into the community.* Thus, instead of providing that no liquor license shall be

issued to any person “convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the sale of intoxicating liquor, or who employs in his business as such dealer, any person , , . who has been convicted of violating such law since the date aforesaid.” § 311.060 RSMo, the Code provides a reasonable rule which would authorize a licensing agency to refuse to grant a license to an applicant whose criminal record and other circumstances indicate the he would endanger the particular group or industry protected by the agency’s licensing power. Many Missouri statutes now leave the matter of licensing to the discretion of the licensing agency, without arbitrary restrictions. *E.g.*, § 334.100 RSMo, giving the state board of registration for the healing arts the power to license individuals guilty of “unprofessional or dishonorable conduct,” including “conviction of a felony.” A prospective physician might have committed a felony followed by a successful period of rehabilitation. The legislature has wisely given the board the power to decide whether he should be

licensed.

Before the circuit court the parties stipulated that the following allegations in the first amended petition, LF at 80, were admitted and deemed true (LF at 9-10):

3. On or about June 23, 2000, Plaintiff Levinson was convicted in the United States District Court in and for the Eastern District of Missouri, at file No. 4:00 CR 52 DJS of using a false social security number, in violation of Title 42, Section 408(a)(7)(B) of the United States Code. A true copy of such conviction and sentence is attached hereto as Plaintiff's Exhibit No. 1 and incorporated herein by reference (LF at 16-21 )

4. At the time of his conviction and sentence, Defendant Levinson was employed as a bartender, as defined by 11 CSR § 70-2.140(11), for a restaurant licensed to serve alcoholic beverages pursuant to either Chapters 311 or 312 of the Revised States of Missouri or both and Title 11, Division 70 of the Missouri Code of State Regulations.

5. Section 311.060.2(2) of the Revised Statutes of Missouri provides,

in part:

(2) No license issued under this chapter or chapter 312, RSMo, shall be denied, suspended, revoked or otherwise affected based solely on the fact that an employee of the licensee has been convicted of a ***felony unrelated*** to the

manufacture or sale of intoxicating liquor *so long as any such employee does not directly participate in retail sales of intoxicating liquor*. Each employer shall report the identity of any employee convicted of a felony to the division of liquor control. The division of liquor control shall promulgate rules to enforce the provisions of this subdivision.

Following his conviction, Plaintiff was placed on probation for a period of three years. Plaintiff's federal probation officer then advised Plaintiff that he would have to cease his employment as a bartender, because such continued employment would violate the foregoing statute and regulation. Plaintiff asked that his federal probation officer inquire of the State of Missouri or the Division of Liquor Control or both whether Levinson's conviction was a felony within the meaning of Section 311.060.2(2). Defendant Levinson terminated his employment rather than face a charge of violation of the terms of probation, imposed as a condition of his sentence, on being informed by his federal probation officer that State of Missouri or the Division of Liquor Control or both contended Levinson's conviction was a felony within the meaning of Section 311.060.2(2).

### **Points Relied**

POINT I: THE CIRCUIT COURT ERRED IN NOT ENTERING A DECLARATORY JUDGMENT IN FAVOR OF APPELLANT THAT THE PROHIBITION OF RSMO § 311.060.2(2) AGAINST HIS BEING EMPLOYED TO DIRECTLY PARTICIPATE IN RETAIL SALES OF INTOXICATING LIQUOR, INCLUDING WORKING AS A BARTENDER, WAS IMPLICITLY REPEALED BY 561.016, IN THAT:

THE PURPOSE OF 561.016 WAS TO IMPLICITLY REPEAL 311.060.2(2) TO THE EXTENT THAT SUCH SECTION DEBARRED APPELLANT FROM EMPLOYMENT, UNLESS DEFENDANTS CAN ESTABLISH THAT APPELLANT'S CONVICTION WAS REASONABLY RELATED APPELLANT'S COMPETENCY TO EXERCISE THE RIGHT OR PRIVILEGE OF BEING EMPLOYED TO DIRECTLY PARTICIPATE IN RETAIL SALES OF INTOXICATING LIQUOR, INCLUDING WORKING AS A BARTENDER

*Magruder v. Petre*, 690 S.W.2d 830 (Mo. Ct. App. 1985);

*Mager v. City of St. Louis*, 699 S.W.2d 68 (Mo. Ct. App. 1985);

*Foxworth v Foxworth*, 732 S.W. 2d 931 (Mo. Ct. App. 1987);

RSMO § 311.060.2(2);

RSMO § 561.016;

RSMO § 620.135;

RSMO § 314.200

POINT II: THE CIRCUIT COURT ERRED IN NOT ENTERING A DECLARATORY JUDGMENT IN FAVOR OF APPELLANT THAT THE PROHIBITION OF RSMO § 311.060.2(2) AGAINST HIS BEING EMPLOYED TO DIRECTLY PARTICIPATE IN RETAIL SALES OF INTOXICATING LIQUOR, INCLUDING WORKING AS A BARTENDER WAS IN VIOLATION OF ARTICLE 1 § 2 OF THE BILL OF RIGHTS FO THE MISSOURI CONSTITUTION AND THE EQUAL PROTECTION CLAUSE OF THE FOURTH AMENDMENT IN THAT APPELLANT HAD THE FUNDAMENTAL RIGHT TO PURSUE THE LAWFUL BUSINESS, CALLING, OR PROFESSION OF BARTENDING AND, FURTHER, THE CLASSIFICATION OF FELONS BETWEEN DIRECTLY PARTICIPATING IN RETAIL SALES OF INTOXICATING LIQUOR AND THOSE ENGAGED IN ALL OTHER BUSINESS, CALLINGS, OR PROFESSIONS IS IRRATIONAL, ARBITRARY, AND CAPRICIOUS.

*Village of Willowbrook v. Olech*, 528 U.S. 562 (2000);

*Bush v. Gore*, 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000);

*Petit v. Field*, 341 S.W.2d 106, 109 (Mo. 1960);

*Fisher v. State Highway Commission*, 948 S.W.2d 607, 609-10 (Mo. 1997);

*State ex rel Knese v. Kinsey*, 282 S.W. 437 (Mo. 1926);

*Mager v. City of St. Louis*, 699 S.W.2d 68 (Mo. Ct. App. 1985);

*City of St. Louis v. Kellman*, 243 S.W.134;

*Silveira v. Lockyer*, No. 01-15098 (9th Cir. 12/05/2002);

*People v. Maness*, 191 Ill.2d 478, 191 Ill.2d 478, 732 N.E.2d 545, 732 N.E.2d 545, 247

Ill.Dec. 490, 247 Ill.Dec. 490 (Ill. 2000);

Mo. Const. Art. 1, Sec.2;

U.S.Const. Amend. 14 (equal protection clause);

RSMo §307.145



## ARGUMENT

POINT I: THE CIRCUIT COURT ERRED IN NOT ENTERING A DECLARATORY JUDGMENT IN FAVOR OF APPELLANT THAT THE PROHIBITION OF 561.016, IN THAT:

THE PURPOSE OF 311.060.2(2) TO THE EXTENT THAT SUCH SECTION DEBARRED APPELLANT FROM EMPLOYMENT, UNLESS DEFENDANTS CAN ESTABLISH THAT APPELLANT’S CONVICTION WAS REASONABLY RELATED APPELLANT’S COMPETENCY TO EXERCISE THE RIGHT OR PRIVILEGE OF BEING EMPLOYED TO DIRECTLY PARTICIPATE IN RETAIL SALES OF INTOXICATING LIQUOR, INCLUDING WORKING AS A BARTENDER

311.060.2(2) Appellant’s occupation is unique in this regard. In any other trade or occupation reinstatement is always possible and a felony conviction, alone, may not be

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<sup>3</sup> Appellant was not convicted of a felony “related to the manufacture or sale of intoxicating liquor” and therefore he does not contest RSMO § 311.060.2(2) to the extent it has application to such felons. No further mention will be made of this exception.

the basis for the denial of a license. RSMO § 314.200:

RSMO § 314.200:

**Denial of license for criminal conviction, prohibited when, effect.**

314.200. No board or other agency created pursuant to laws of the state of Missouri, or by any city, county or other political subdivision of the state, for the purpose of licensing applicants for occupations and professions may deny a license to an applicant primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral character, where the conviction resulted in the applicant's incarceration and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation. The board or other agency may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant's character.

Missouri acted in 1977 to correct this irrationality by enacting Section 561.016.

The purpose of this section was to implicitly repeal irrational legal disqualifications

arising from a conviction. Nonetheless (twenty five years after passage of the new Criminal Code) the Defendants continue to enforce 311.060.2(2) must be declared no longer in effect.. First, Section 561.016.1(3) because the disqualification was *not* provided by a statute other than the code, when the conviction was of a crime defined by such statute. The crime of which Plaintiff was convicted was defined by federal statute. *Accord Mager v. City of St. Louis*, 699 S.W.2d 68 (Mo. Ct. App. 1985).

The circuit court, *sans* any discussion of the Legislative Comments to 561.016, held that 311.060.2(2) was not implicitly repealed by the 561.106, completely disregarding the reasoning in *Foxworth v Foxworth*, 732 S.W. 2d 931 (Mo. Ct. App. 1987)Foxworth v Foxworth, 732 S.W. 2d 931 (Mo. Ct. App. 1987):

[O]ne of the objectives of The Criminal Code was to reduce the number of statutes providing for collateral consequences of criminal convictions, and to place all statutes dealing with that subject in one location.

That is borne out by chapter 561, RSMo 1978. It is entitled, "Collateral Consequences of Conviction," and comprises three sections. They are § 561.016, quoted earlier in pertinent part, § 561.026, quoted earlier in full, and § 561.021, set forth below. \*fn4

The Criminal Code is based on the 1973 Proposed Criminal Code, prepared by the Committee to Draft a Modern Criminal Code. The Committee

Comment on the section that became § 561.016 appears in 40 V.A.M.S. pp. 213-15 (1979), and provides, in pertinent part: [55] ". . . this general section is the foundation of the recommended proposal to rationalize the collateral consequences of a criminal conviction. As indicated by the proliferation of statutory provisions now on the books there is a need for general provisions on the matter of disqualification or disability following conviction.

No person shall suffer any legal disqualification or disability because of a finding of guilty or a criminal conviction unless he falls within one or more of the four subsections, 1(1) to (4).

The circuit erred in disregarding 561.016, *Mager*, and Article I, section 2 of the Missouri Constitution: ". . . that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry . . ." *Fisher* (948 S.W.2d at 613):

The majority fails to mention the full range of rights protected by the

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<sup>4</sup> Appellant was not convicted of a felony "related to the manufacture or sale of intoxicating liquor" and therefore he does not contest 311.060.2(2) to the extent it has application to such felons. No further mention will be made of this exception.

Missouri Constitution, article I, sec. 2. It provides: "That all persons have a natural right to life liberty, the pursuit of happiness and the enjoyment of the gains of their own industry." Taken together, these provisions give persons in this state a fundamental right to lawfully acquire, hold, enjoy and dispose of property. *Stone v. City of Jefferson*, 317 Mo. 1, 293 S.W. 780, 782 (Mo. banc 1927). A necessary adjunct of that right is the right to pursue any lawful business, calling, or profession. Indeed, a citizen's right to pursue a business, calling, or profession is both a liberty and property right to be guarded as zealously as any other fundamental right. *Greene v. McElroy*, 360 U.S. 474, 492, 3 L. Ed. 2d 1377, 79 S. Ct. 1400 (1959); *Downey v. United Weatherproofing*, 363 Mo. 852, 253 S.W.2d 976, 982 (Mo. 1953)

The making and serving of alcoholic beverages is not inherently unlawful or illegal, even though the State has a substantial interest in their regulation<sup>5</sup>. Does not the Bible teach us

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<sup>5</sup>An offence *malum in se* is one which is naturally evil, as murder, theft, and the like; offences at common law are generally *mala in sese*. An offence *malum prohibitum*, on the contrary, is not naturally an evil, but becomes so in consequence of its being forbidden; as playing at games, which being innocent before, have become unlawful in consequence of being forbidden.

that the first miracle was the making and serving of wine?

John 2

1 And the third day there was a marriage in Cana of Galilee; and the mother of Jesus was there:

2 And both Jesus was called, and his disciples, to the marriage.

3 And when they wanted wine, the mother of Jesus saith unto him, They have no wine.

4 Jesus saith unto her, Woman, what have I to do with thee? mine hour is not yet come.

5 His mother saith unto the servants, Whatsoever he saith unto you, do it.

6 And there were set there six waterpots of stone, after the manner of the purifying of the Jews, containing two or three firkins apiece.

7 Jesus saith unto them, Fill the waterpots with water. And they filled them up to the brim.

8 And he saith unto them, Draw out now, and bear unto the governor of the feast. And they bare it.

9 When the ruler of the feast had tasted the water that was made wine, and knew not whence it was: (but the servants which drew the water knew;) the governor of the feast called the bridegroom,

10 And saith unto him, Every man at the beginning doth set forth good wine; and

when men have well drunk, then that which is worse: but thou hast kept the good wine until now.

11 This beginning of miracles did Jesus in Cana of Galilee, and manifested forth his glory; and his disciples believed on him.

Alcoholic beverages are no different legally from any other product. Any product may be regulated, to the extent such regulation is necessary and proper for public health or safety.

*Compare City of St. Louis v. Kellman*, 243 S.W.134 *City of St. Louis v. Kellman*, 243 S.W.134 (milk may be regulated). It is within the power of the legislature to outlaw alcoholic beverages, just as it is within the power of the legislature to outlaw firearms, *State ex rel. Knese v. Kinsey*, 282 S.W. 437, 439 (Mo. banc 1926)(“there is nothing in the record to show that it is impractical for the city to cause sufficient inspection”)and

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<sup>6</sup> *E.g.*, RSMo 307.145RSMo 307.145, which makes it illegal to sell a motor vehicle not equipped with safety glass and which provides:

**Sale of vehicles without safety glass prohibited.**

It shall be unlawful after January 1, 1936, to sell in the state of Missouri, any motor vehicle, manufactured or assembled after said date, and designed for the purpose of carrying passengers, unless such vehicle be equipped in all doors, windows, rear windows and windshields with safety glass.

void the lifetime ban of Section 311.060.2(2). Accord *Mager, supra*, is that the right to serve liquor is protected by Article 1, Section 2

Mager cannot return to his job if the ordinance is valid. Mager can return to his job if the ordinance is invalid. *Mager's employment is a legal interest susceptible of protection*. It is a right or status which is affected by the municipal ordinance. Therefore, he has standing to sue to determine its validity. Rule 87.02(a). (emphasis added)

How else but through Article 1, Section 2 could Mager's interest in returning to work serving liquor rise to being a "legal interest susceptible of protection.?"

Second, *Bush v. Gore*, 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000); RSMO 561.016.1(4), which provides:

(4) Provided by the judgment, order, or *regulation* of a court, *agency* or official exercising a *jurisdiction* conferred by law, or by the statute defining such jurisdiction, when the commission of the crime or the conviction or the sentence is *reasonably related* to the competency of the individual to exercise the right or privilege of which he has been deprived.

The defense fails for two reasons.

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<sup>7</sup>Specifically, why is Appellant excluded from the benefits of RSMO § 314.200 and 620.135?



First, the condition precedent of the statute is that the Defendants must be exercising “jurisdiction” over Plaintiff. Defendants, on deposition, testified they are not acting pursuant to any “jurisdiction over Plaintiff. On January 7<sup>th</sup>, the following exchange took place, at page 3, line 17 (Fuller Deposition)(LF at 43-44):

Q. My first question for you, sir, is, and I’m not asking your private opinion, okay, but my question is, as the Division interprets and applies its statutes and regulations, could you tell me, is Mr. Levinson subject to the jurisdiction of the Division?

A. I’d like to be able to give you a succinct answer as far as yes or no, but why you say subject to the jurisdiction of the Division, the Division licenses liquor establishments, and so as a person in that regard, *he would not be subject to the jurisdiction of the Division because we would not consider him a licensee.*

Second, the Commission has no factual basis for concluding that a felony conviction is reasonably related to the sale or service of retail. See Fuller Deposition *passim*.

*Bush v. Gore* stands for the fundamental proposition that fact finders must be provided with sufficient guidelines to insure equal application of the law (531 U.S. at 106):

The problem inheres in the absence of specific standards to ensure its equal application. The formulation of uniform rules to determine intent based on

these recurring circumstances is practicable and, we conclude, necessary.

The law does not refrain from searching for the intent of the actor in a multitude of circumstances; and in some cases the general command to ascertain intent is not susceptible to much further refinement. In this instance, however, the question is not whether to believe a witness but how to interpret the marks or holes or scratches on an inanimate object, a piece of cardboard or paper which, it is said, might not have registered as a vote during the machine count. The fact finder confronts a thing, not a person. The search for intent can be confined by specific rules designed to ensure uniform treatment.

*Accord Mager v. City of St. Louis*, 699 S.W.2d 68 (Mo. Ct. App. 1985) the court of appeals “reversed and remanded to permit the excise commissioner to determine whether the crime appellant is convicted of is reasonably related to his competency to perform his duties.” Today, viewed through the lens of *State ex rel Knese v. Kinsey*, 282 S.W. 437, 441 c.2 (Mo. 1926). There is nothing in this record to show that inspection will not protect the public from felons serving liquor. Second, because the remand lacked even the most rudimentary requirements of equal treatment and fundamental fairness because it omitted any control over the discretion of the commissioner.

It is time to complete what the Legislature started a quarter century ago. Retail sale and service of alcoholic beverages pervades our society. Section 311.060.2(2) bars

Appellants and thousands of others from hundreds or perhaps thousands of good jobs, jobs for which Missouri is spending billions in taxpayer subsidies. For example, Appellant cannot work as a concessionaire at a Ram's game, a facility built with \$350 million in taxes. Plaintiff cannot, for example, work as a check out person at a 7-11 convenience store, in a super market, or in a department store that sells wine or beer. He cannot wait tables or tend bar in a better restaurant. If anything is a denial of equal protection, when lawyers convicted of felonies can file briefs and try cases and doctors can perform surgery and prescribe drugs, and nurses can administer the same, then Section 311.060.2(2) is.

Respectfully submitted,

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Thursday, December 19, 2002



**Certificate of Compliance**  
**With Missouri Civil Rule 84.06(c)**

The undersigned certifies:

1. Appellants' brief complies with Rule 84.06(b)
2. Appellants' brief has fewer than 31,000 words and that according to the word count feature of WordPerfect 10 (File, Properties, Information) such brief has 7185 words.

Respectfully submitted,

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Attorney for Appellant

December 19, 2002

**Proof of Service**

On Thursday, December 19, 2002, I served the foregoing document on:

**Theodore A. Bruce, Esq.**  
**Assistant Attorney General**  
**Office of the Attorney General**  
**P.O.Box 899**  
**Jefferson City, MO 65102**

as attorney for Respondents by

X placing a true copy of the foregoing in a sealed envelope, addressed to such attorney with his last known address, with postage thereon fully prepaid in the United States Mail at St. Louis, Missouri, 63101.

delivering a copy to personally to such attorney or by leaving a copy at the attorney's office with a clerk or secretary or with an attorney employed by or associated with such attorney.

facsimile transmission of a true copy of the foregoing on December 19, 2002, to telephone number:

I declare that I am a member of the Missouri Bar.

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JOHN L. DAVIDSON